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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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December 21, 2020

Cynthia K. Shaw
Director, Departmental Ethics Office
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Director Shaw:

I am writing for clarification about a potential conflict of interest involving a member of the Department of Justice (DOJ). Prior to his appointment as United States Attorney General, William P. Barr represented Caterpillar Inc. (Caterpillar) in connection with a federal criminal investigation into the company's tax practices. According to reports, one week after Mr. Barr was nominated to be Attorney General, "[DOJ] officials in Washington told the investigative team in the active criminal probe of Caterpillar to take 'no further action' in the case."¹ Under such circumstances, I am concerned that if Mr. Barr returned to his representation of Caterpillar after his tenure as Attorney General ends it could create the appearance of a conflict of interest, and I request that you publicly clarify whether DOJ ethics rules would permit such concerning conduct.

In 2015, Caterpillar disclosed that a federal grand jury in Illinois had begun investigating the alleged tax scheme.² This investigation led to raids by federal agents on three Caterpillar offices in March 2017.³ Days after the raids, Caterpillar announced that it retained Mr. Barr "to take a fresh look at Caterpillar's disputes with the government, get all the facts, and then help us bring

¹ *Exclusive: U.S. investigators were told to take 'no further action' on Caterpillar, ex-client of Barr*, REUTERS, Nov. 18, 2020, (internal quotation marks omitted), [<https://www.reuters.com/article/us-usa-barr-caterpillar-exclusive/exclusive-u-s-investigators-were-told-to-take-no-further-action-on-caterpillar-ex-client-of-barr-idUSKBN27Y2PO>].

² Caterpillar Inc., *Annual Report* (Form 10-K), at 22, (Feb. 15, 2015), ("On January 8, 2015, the Company received a grand jury subpoena from the U.S. District Court for the Central District of Illinois. The subpoena requests documents and information from the Company relating to, among other things, financial information concerning U.S. and non-U.S. Caterpillar subsidiaries (including undistributed profits of non-U.S. subsidiaries and the movement of cash among U.S. and non-U.S. subsidiaries)."), [https://www.sec.gov/Archives/edgar/data/18230/000001823015000061/cat_10-kx12312014.htm].

³ *Federal Agents Search Caterpillar Locations*, WALL STREET JOURNAL, Mar. 3 2017, [<https://www.wsj.com/articles/federal-agents-search-caterpillar-locations-1488475293>].

these matters to proper resolution based on the merits.”⁴ Since January 2018, the Internal Revenue Service has sought to recover \$2.3 billion in unpaid taxes and penalties from Caterpillar in connection with the alleged tax practices.⁵

On December 7, 2018, President Donald J. Trump announced that he would nominate Mr. Barr to serve as Attorney General.⁶ According to a written submission he made to the Committee on the Judiciary the next month, Mr. Barr “stopped actively working on matters relating to Caterpillar” on the same day—“[w]hen the President announced his intent to nominate [him] to serve as Attorney General.”⁷ Six days later, an inspector general agent at the U.S. Federal Deposit Insurance Corporation was reportedly instructed by the DOJ Tax Division and the Office of the Deputy Attorney General “that no further action was to be taken on the [Caterpillar] matter until further notice.”⁸ The investigation has reportedly been “stalled” since this order was issued.⁹

Many questions remain unanswered about the circumstances leading to the apparent freezing of the criminal investigation of Caterpillar just days after its lawyer, Mr. Barr, was nominated to serve as Attorney General. However, my request for information here concerns only the prospective conduct Mr. Barr will be permitted to engage in pursuant to federal ethics rules once he leaves government service. Can you please clarify whether Mr. Barr would be permitted to resume his representation of Caterpillar in the still-pending criminal investigation of its tax practices, notwithstanding his reported recusal from the matter during his tenure as Attorney General, given that he has led DOJ for nearly two years during which a “no further action” order has reportedly “stalled” the investigation?¹⁰

Because of the time sensitive nature of this request, I ask that you provide the requested clarification as soon as possible but no later than January 4, 2021. If you have any questions you

⁴ *New Caterpillar CEO Asks Former U.S. Attorney General to Assess and Help Address Ongoing Government Investigation*, CATERPILLAR/CISION PR NEWSWIRE, Mar. 16, 2017, [<https://www.prnewswire.com/news-releases/new-caterpillar-ceo-asks-former-us-attorney-general-to-assess-and-help-address-ongoing-government-investigation-300425118.html>].

⁵ Caterpillar Inc., *Annual Report* (Form 10-K), at 102, (Feb. 15, 2018), (“On January 31, 2018, we received a Revenue Agent’s Report from the IRS indicating [. . .] proposed increases to tax and penalties for these years of approximately \$2.3 billion.”), [https://www.sec.gov/Archives/edgar/data/18230/000001823018000042/cat_10-kx12312017.htm].

⁶ *Remarks by President Trump Before Marine One Departure*, Dec. 7, 2018, (“I want to confirm that Bill Barr [. . .] will be nominated for the United States Attorney General.”), [<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-28/>].

⁷ *Questions for the Record, William P. Barr, Nominee to be United States Attorney General* at 144, Letter from Attorney General William P. Barr to Committee on the Judiciary Chairman Lindsey Graham, Jan. 27, 2019, [<https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20QFRs.pdf>].

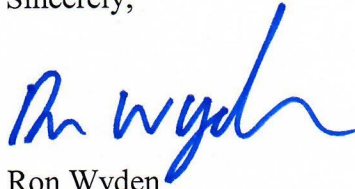
⁸ *Exclusive: U.S. investigators were told to take 'no further action' on Caterpillar, ex-client of Barr*, REUTERS, Nov. 18, 2020, (“I was instructed on December 13, 2018,” wrote the agent, Jason LeBeau, “that the Tax Division and the Office of the Deputy Attorney General jointly came to the decision that no further action was to be taken on the matter until further notice.”), [<https://www.reuters.com/article/us-usa-barr-caterpillar-exclusive/exclusive-u-s-investigators-were-told-to-take-no-further-action-on-caterpillar-ex-client-of-barr-idUSKBN27Y2PO>].

⁹ *Id.* (“Since then, a source close to the case says, the investigation has ‘stalled.’”) (internal quotation marks omitted).

¹⁰ *Id.*

may contact Ranking Member Wyden's Senate Finance oversight staff at 202-224-7800. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Wyden". The signature is fluid and cursive, with the first name "Ron" and last name "Wyden" clearly distinguishable.

Ron Wyden
Ranking Member